

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Petition to )  
Revoke Probation Against: )**

**Thomas Evans Mitchell, Jr., M.D. )**

**Case No. D1-2002-138234**

**Physician's and Surgeon's )  
Certificate No. G-54207 )**

**OAH No. 2011040378**

**Respondent )**

**DECISION**


**The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on November 23, 2011.**

**IT IS SO ORDERED October 24, 2011.**

**MEDICAL BOARD OF CALIFORNIA**

**By:**

  
**Hedy Chang, Chair  
Panel B**

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation Against:**

**Case No. D1-2002-138234**

**THOMAS EVANS MITCHELL, JR., M.D.**

**OAH No. 2011040378**

**Physician's and Surgeon's Certificate  
No. G54207,**

**Respondent.**

**PROPOSED DECISION**

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on August 16, 2011, in Los Angeles, California. Complainant was represented by Chris Leong, Deputy Attorney General. Thomas Evans Mitchell, Jr., M.D. (Respondent) was present and represented himself.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on August 16, 2011.

**FACTUAL FINDINGS**

1. On December 8, 2011, Linda K. Whitney (Complainant) filed the Petition to Revoke Probation while acting in her official capacity as the Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.
2. On April 7, 2011, Respondent filed a Notice of Defense requesting a hearing on the Petition to Revoke Probation.
3. On January 14, 1985, the Board issued Physician's and Surgeon's Certificate Number G54207 to Respondent. That certificate was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2012, unless renewed.

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4(a). In a Decision and Order, effective March 10, 2008, in Case No 06-2002-138234 (Prior Decision), the Board revoked Respondent's certificate, stayed the revocation and placed Respondent on probation for five years on specified terms and conditions, which included the following:

4. Quarterly Declarations - Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the [Board], stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

5. Probation Unit Compliance - Respondent shall comply with the [Board's] probation unit. Respondent shall, at all times, keep the [Board] informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the [Board] or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Respondent shall not engage in the practice of medicine in respondent's place of residence. Respondent shall maintain a current and renewed California physician's and surgeon's license.

Respondent shall immediately inform the [Board] or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

6. Interview with the [Board] or its Designee - Respondent shall be available in person for interviews either at respondent's place of business or at the probation unit office, with the [Board] or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.

[¶] . . . [¶]

10. Violation of Probation - Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the [Board], after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the [Board] shall have continuing

jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

[¶] . . . [¶]

12. Probation Monitoring Costs - Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the [Board], which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the [Board] or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

13. [Clinical Training Program -] Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine (Program).

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to respondent's specialty or sub-specialty, and at minimum, a 40 hour program of clinical education in the area of practice in which respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the [Board] or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on respondent's performance and test results in the assessment and clinical education, the Program will advise the [Board] or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting respondent's practice of medicine. Respondent shall comply with Program recommendations.

At the completion of any additional educational or clinical training, respondent shall submit to and pass an examination. The Program's determination whether or not respondent passed the examination or successfully completed the Program shall be binding.

Respondent shall complete the Program not later than six months after respondent's initial enrollment unless the Board or its designee agrees in writing to a later time for completion.

Failure to participate in and complete successfully all phases of the clinical training program outlined above is a violation of probation.

If respondent fails to complete the clinical training program within the designated time period, respondent shall cease the practice of medicine within 72 hours after being notified by the [Board] or its designee that respondent failed to complete the clinical training program.

4(b). The Prior Decision was based a finding that respondent was grossly negligent in his failure to order that a patient be transferred to an acute care facility following an outpatient surgery for which respondent was the anesthesiologist.

5(a). The Prior Decision was issued on January 30, 2008, with an original effective date of February 29, 2008. On February 27, 2008, Respondent signed an Acknowledgment of Decision, confirming that he had received the Prior Decision and that a Board investigator had explained and respondent understood all terms and conditions of his probation.

5(b). After the Board issued the Prior Decision, respondent filed a petition for reconsideration with the Board. The effective date of the Prior Decision was stayed until March 10, 2008, to allow the Board to review and consider the petition for reconsideration. On March 10, 2008, the Board denied Respondent's petition for reconsideration, and the effective date of the Prior Decision remained March 10, 2008.

6(a). In June 2008, respondent filed a petition for writ of mandate in the Los Angeles Superior Court. No stay of the Prior Decision was requested, nor was a stay ordered by the Superior Court.

6(b). On November 25, 2008, the Superior Court entered a judgment sustaining a demurrer, without leave to amend, and dismissing the petition for writ of mandate.

7. On December 18, 2008, the Board issued a Suspension Order based on respondent's failure to successfully complete the PACE program or its equivalent within six months after his initial enrollment, which enrollment should have been accomplished within 60 days of the effective date of the Prior Decision.

8. At an April 28, 2010 meeting, Board investigators informed respondent that they would be recommending revocation of his probation based on his failure to comply with his probationary terms and conditions.

9(a). Respondent never enrolled in the PACE program.

9(b). At the administrative hearing, he argued that his delay in taking PACE or an equivalent program was due to his petitioning the Board for reconsideration and the Superior Court for a writ of mandamus. This argument was not persuasive, since the Prior Decision was not stayed during the time respondent was petitioning for a writ of mandamus. Furthermore, even if he believed he could delay due to the petition for writ of mandamus, he still failed to enroll in the PACE program after dismissal of the Superior Court action on November 25, 2008.

9(c). On June 27 or 28, 2011, respondent enrolled in a simulation-based assessment and retraining program at the Mount Sinai School of Medicine, Department of Anesthesiology, HELPS Center. From June 29 through August 5, 2011, respondent completed the HELPS four-week program, which included 10 hours per week of simulation and 40-50 hours per week of operating room observation with attending anesthesiology proctors. As of August 15, 2011, the results of his simulation-based assessments were pending, and it was not established that respondent had successfully completed the HELPS program.

9(d). Respondent argued that the HELPS program was a PACE equivalent program of clinical training. However, he admitted that he never received confirmation from the Board that HELPS was approved as a PACE equivalent program. Additionally, he never provided documentation of his participation in HELPS prior to the administrative hearing.

10. Respondent's failure to complete successfully all phases of the PACE clinical training program or its equivalent constitutes a violation of his probationary condition number 13.

11(a). Respondent has not submitted quarterly declarations since the second quarter of 2008. The quarterly declarations he has failed to submit include: the last two quarters in 2008; all four quarters in 2009; all four quarters in 2010; and all quarterly reports due for 2011.

11(b). At the administrative hearing, respondent admitted that he had failed to submit more than 10 quarterly reports. However, he blamed his initial failure on his attempts obtain reconsideration and a writ of mandamus. As set forth in Factual Finding 9(b), this argument was not persuasive, since the Prior Decision was not stayed during the time respondent was petitioning for a writ of mandamus. Furthermore, even if he believed he could delay due to the petition for writ of mandamus, he still failed to file quarterly reports after dismissal of the Superior Court action on November 25, 2008.

11(c). Respondent also insisted that his continued failure to submit quarterly reports was because he was waiting for the Board to review its decision pursuant to Government Code section 11521, and that this code section had no time limitation. This assertion is

unreasonable and is an inaccurate reading of section 11521, which sets time limits for reconsideration and for expiration of stays granted by the Board.

11(d). Respondent also blamed his failure to submit quarterly reports on his conversation with investigators at the April 28, 2010 meeting wherein they informed him they would be recommending revocation of his probation. According to respondent, based on this conversation, "subsequent quarterly declarations were made to appear meaningless to him." This assertion was not credible, given that respondent participated in the four-week HELPS retraining program after the April 28, 2010 meeting in an effort to meet another probationary condition.

12. Respondent's failure to submit more than 10 quarterly reports constitutes a violation of his probationary condition number 4.

13. Respondent's current probation monitor began supervising his probation in February 2010. Since then, the probation monitor requested that respondent attend interviews during six quarters (i.e. four quarters in 2010 and two quarters in 2011), but he attended only one of the six.

14. Respondent's failure to appear in person for interviews on the Board monitor's request constitutes a violation of his probationary condition number 6.

15. Respondent has never paid any of his probation monitoring costs. The balance he currently owes is \$7,110.

16. Respondent's failure to pay any of his probation monitoring costs constitutes a violation of his probationary condition number 12.

17. Complainant did not establish that respondent violated probationary condition number 5 (failure to keep the Board informed of his home or business address).

18. Respondent has demonstrated very little effort to comply with most of his probationary conditions. Furthermore, at the administrative hearing, Respondent gave no assurances that, if probation was extended, he would comply with the conditions he has flouted.

## **LEGAL CONCLUSIONS**

1. Cause exists to revoke respondent's probation and impose the stayed revocation of respondent's license for failure to comply with Condition 4 of his probation, by failing to submit quarterly reports, as set forth in Factual Findings 4 through 12.

2. Cause does not exist to revoke respondent's probation and impose the stayed revocation of respondent's license for failure to comply with Condition 5 of his probation

since Complainant did not establish that respondent failed to keep the Board informed of his home or business address, as set forth in Factual Findings 4 and 17.

3. Cause exists to revoke respondent's probation and impose the stayed revocation of respondent's license for failure to comply with Condition 6 of his probation, by failing to appear in person for interviews on the Board investigator's request, as set forth in Factual Findings 4 through 14.

4. Cause exists to revoke respondent's probation and impose the stayed revocation of respondent's license for failure to comply with Condition 12 of his probation, by failing to pay any of his probation monitoring costs, as set forth in Factual Findings 4 through 16.

5. Cause exists to revoke respondent's probation and impose the stayed revocation of respondent's license for failure to comply with Condition 13 of his probation, by failure to complete successfully all phases of the PACE clinical training program or its equivalent, as set forth in Factual Findings 4 through 10.

6. Cause does not exist to revoke respondent's probation and impose the stayed revocation of respondent's license for failure to comply with Condition 10 of his probation since there were no terms specified in that condition. Instead, Condition 10 enables Complainant to revoke respondent's probation if he violates any of the other specified terms and conditions.


7. Respondent has unreasonably refused to comply with several probationary terms. His disregard for the terms of probation and his refusal to admit his wrongdoing bode poorly for the success of continued probation. Furthermore, Respondent has failed to demonstrate any change in attitude and has provided no assurance that, if probation was extended, he would begin compliance with his probationary terms. Given the foregoing, the public health, safety and welfare cannot be protected by any discipline short of revocation.

### **ORDER**

#### **WHEREFORE, THE FOLLOWING ORDER is hereby made:**

Physician's and Surgeon's Certificate Number G54207, issued to Respondent, Thomas Evans Mitchell, Jr., is hereby revoked.

DATED: September 23, 2011



JULIE CABOS-OWEN  
Administrative Law Judge  
Office of Administrative Hearings